

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Anthony Jesus Johnson, #261882

Petitioner,

v.

State of South Carolina; Henry D.
McMaster, Attorney General of the
State of South Carolina; and Warden,
McCormick Correctional Institution,

Respondents.

C/A No. 2:06-2593-GRA-RSC

ORDER
(Written Opinion)

This matter is before the Court for a review of the magistrate's Report and Recommendation filed on June 7, 2007 and made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C. Petitioner brought this *habeas* action seeking relief pursuant to Title 28, United States Code, Section 2254. On January 18, 2007, the Respondents filed a Motion for Summary Judgment. On January 29, 2007, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Petitioner filed a response on April 20, 2007 and Respondents replied on April 30, 2007. The magistrate recommends granting Respondents' Motion for Summary Judgment because the petition was not timely filed under the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2244(d).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final

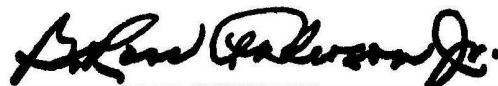
determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The petitioner has not filed objections to the Report and Recommendation.

After a review of the magistrate's Report and Recommendation, this Court finds the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Respondents' Motion for Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Petitioner's Motion to Withdraw Petition, which was construed as a motion to amend his petition, is DENIED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.

UNITED STATES DISTRICT JUDGE

July 2, 2007

Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date of the entry of this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.